" The law, however, seems to be clear that where at any stage of its history there has been consideration for a bill and there is no question of illegality of consideration then it can be sued on and if the original drawer is sued it is for him to prove that at no time has there been consideration."

Good J.A.: I have read the judgment of the learned Chief Justice and agree that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; Eugene Lye & Hoh.*

Re SIM KHOON SENG'S APPLICATION

[A. Cr. J. (Rose C.J.) September 19, 1962]

[Singapore — Criminal Motion No. 1 of 1962]

Local Government — Nuisance order — Whether Magistrate competent to vary abatement order to that of closing order at subsequent hearing — Local Government Ordinance, 1957, s.248.

Interpretation — Strict construction of penal statute.

A Magistrate has no jurisdiction to make a further order at a subsequent time upon a fresh summons regarding the same default under section 284 of the Local Government Ordinance when at the original hearing he had made an abatement order under that section. These matters being quasi-criminal in their nature, the normal rule as to strict construction of a penal statute should apply and any ambiguity should be resolved in favour of the subject.

Case referred to:—

(1) *In re Chung Lit & Chung Ah Kam* [1952] M.L.J. 123, followed.

CRIMINAL MOTION.

K. K. Bezboruah for the applicant.

Lim Seow Beng for the owners of premises.

Sachi Saurajen (Deputy Public Prosecutor) for the City Council.

Rose C.J.: This motion raises a purely technical point under the Local Government Ordinance, 1957.

The facts are not in dispute and the only matter that arises is one of interpretation of section 248 of the Local Government Ordinance (Ordinance No. 24 of 1957).

The relevant part of section 248 reads as follows:—

" 248.— (1) If either—

(a) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or

(b) the nuisance, although abated since the service of the notice, is in the opinion of the local authority likely to recur on the same premises,

on complaint by the local authority a Magistrate's Court hearing the complaint may make on such person a summary order, in this Ordinance referred to as a 'nuisance order'.

(2) A nuisance order may be an abatement order or a prohibition order or a closing order or a combination of such orders.

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance.

(5) An abatement order or prohibition order shall, if the person on whom the order is made so requires or the Court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.

(6) A closing order may prohibit a dwelling-house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the Court that by reason of a nuisance a dwelling-house is unfit for human habitation, and, if such proof is given, the Court shall make a closing order and may impose a fine not exceeding four hundred dollars."

The point taken by learned counsel for the applicant is that it is not competent for the Magistrate to make a closing order at a subsequent hearing when at the original hearing he elected, under subsection (2) of section 248, to make an abatement order only.

The argument is that it is open to the Magistrate, after hearing any necessary evidence and considering any relevant submissions, to make either an abatement order or a prohibition order or a closing order or a combination of such orders. But having once made his choice he cannot at a subsequent hearing in relation to the same default vary the decision.

These matters being, at the least, quasi criminal in their nature, it seems to me that the normal rule as to strict construction of a penal statute should apply and that any ambiguity — if there is an ambiguity — should be resolved in favour of the subject. Moreover, the only authority to which learned counsel were able to refer me supports this view, although admittedly the passage in question is *obiter*. In *In re Chung Lit & Chung Ah Kam* [1] at page 128 Spenser Wilkinson J. says:—

" There is a further point regarding this closing order, which was not taken at the hearing before me. The original Notice called upon the owner to abate the nuisance within one month from the service of the Notice. The owner failed to comply so that one month after service, which was effected on the 7th July, 1950, he was in default. Upon this default the owner was summoned in pursuance of section 247(1) and appeared before the Court. It was then open to the Court both to impose a fine and then make an order, which under sub-section (2) of section 247 could be an abatement order or a prohibition order or a closing order or a combination of such orders. After hearing the parties the Magistrate made an abatement order only. I am inclined to think that that was the end of the proceedings and I doubt whether the Magistrate had any jurisdiction to make any further order at a subsequent time upon a fresh summons regarding the same default. Under sub-section (9) of section 247 the owner could, of course, be summoned, as he was, and fined; but having refrained from making a closing order when the matter was properly before the Court on the 18th October, 1950 I find it difficult to see under what provision of the law a further nuisance order in the shape of a closing order could be made on the 7th March, 1951. As, however, the point was not argued before me I express this view only tentatively."

I respectfully agree with this view. That being so I consider I have no alternative but, albeit with some regret, to set aside the closing order.

Closing order set aside.

Solicitors: *K. K. Bezboruah; Boswell, Hsieh & Lim.*